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In The

Supreme Court of the United States

October Term, 1997

NANCY KIMBALL KRIPPENE, Individually, and as the Executrix of the Estate of URBAN M. KRIPPENE, Deceased,

Petitioner,

vs.

BOARD OF COMMISSIONERS OF CHATHAM COUNTY, GEORGIA and CHATHAM COUNTY, GEORGIA,

Respondents.

On Petition for Writ of Certiorari to the United States Court of Appeals for the Eleventh Circuit

PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED

Whether a custom or policy and the arbitrary and deliberate indifference of the Respondents' Police Department regarding the known intentional conduct of its police officers who arbitrarily abused their governmental power in operating police vehicles in a manner that shocks the conscience, rose to the level of a Constitutional deprivation that would support relief under 42 USC Section 1983 for the death of Petitioner's decedent.

PARTIES TO THE PROCEEDING

There are no parties to this proceeding other than the Petitioner Nancy Kimball Krippene, Individually and as the Executrix of the Estate of Urban M. Krippene, deceased, and the Respondents Board of Commissioners of Chatham County, Georgia, and Chatham County, Georgia.

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Petitioner, Nancy Kimball Krippene, Individually and as the Executrix of the Estate of Urban M. Krippene, deceased, respectfully requests a Writ of Certiorari to review in this Case the *Per Curiam* Opinion of the Court of Appeals for the Eleventh Circuit affirming the Order and Judgment of the United States District Court for the Southern District of Georgia.

OPINIONS BELOW

The *Per Curiam* Opinion of the Court of Appeals citing *Rooney v. Watson*, 101 F.3d 1378 (11th Cir. 1996) as authority directly supporting the proposition, is not published (App. A).

The Order of the United States District Court for the Southern District of Georgia upon which Judgment was entered, *Nancy Kimball Krippene v. Board of Commissioners of Chatham County, Georgia, et al.*, Case Number CV496-211, also is unpublished (App. B).

STATEMENT OF JURISDICTION

The *Per Curiam* Opinion (Judgment) of the United States Court of Appeals for the Eleventh Circuit was entered on December 1, 1997. This Court of Appeals denied a timely Petition for Rehearing and Suggestion of Rehearing En Banc on February 23, 1998 (App. C).

The jurisdiction in this Court is invoked under 28 U.S.C. § 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The Fourteenth Amendment to the United States Constitution provides in relevant part: "No State shall ... deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

42 U.S.C. § 1983 provides in relevant part: "Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress."

STATEMENT OF THE CASE

To fully appreciate the significance of the issues presented by this Petition, it is essential to consider both its background and the proceedings below.

A. Background of District Court Order and Judgment

This Case involves a claim by the Appellant Nancy Kimball Krippene seeking damages from the Respondents as the Surviving Spouse of her late Husband, Urban M. Krippene, and as the Executrix of

the Estate of her deceased Husband. The Complaint is based on the provisions of 42 U.S.C. Section 1983 and alleges that as a result of Chatham County, Georgia having a "custom or policy" concerning preferential treatment by Policymakers of its Police Officers who violated traffic laws placing the public at risk and of also failing to train, re-train and adequately discipline one of its County Police Officers, Bryan D. Smith, who had a lengthy record of Official misconduct, that included driving-related misconduct, this custom or policy and this misconduct by Bryan Smith caused a Constitutional deprivation to and the death of Urban M. Krippene when Officer Smith drove a Chatham County Police vehicle to work on November 18, 1994 in an unjustifiably high rate of speed and collided with a vehicle being driven by the late Urban M. Krippene. (*See Generally* Background recited in Division I, p.1, Summary Judgment Order dated April 16, 1997) (App. B)

B. The Proceedings Below

The Petition before this Court arises from the Complaint of Nancy Kimball Krippene, as Surviving Spouse and Executrix of the Estate of her late Husband, Urban M. Krippene, filing the above stated 42 U.S.C. Section 1983 action initially brought against [Ronald Lowe, Sr., Individually and as Chief of Police of Chatham County Police Department who was later dismissed as a party by Consent Order], the Board of Commissioners of Chatham County, Georgia and Chatham County, Georgia, based on the following facts:

Habitual pattern of violations by Officer Bryan D. Smith

The Bryan Smith termination letter signed by Ronald Lowe as Chief of Police of Chatham County Police Department, dated January 12, 1995, established that Chatham County Police Officer Bryan D. Smith, during his employment with the Chatham County Police Department (from April 13, 1991 to the time of his termination on January 12, 1995), had a habitual pattern of repeated incidents of poor judgment, reckless operation of Police vehicles, negligence and failure to follow Departmental Policy. (Bryan Smith Termination Letter, Court of Appeals Record R3-36-Exhibit A, App. D)

The Petitioner contends that the failure on the part of Chatham County to take remedial steps regarding its Police Officers, that included Bryan Smith, amounted to deliberate indifference or tacit authorization by the County of the offensive acts committed by its Police Officers, including Officer Smith during his employment, that rose to the level of a Constitutional deprivation of the rights of the late Urban M. Krippene.

Officer Smith had been previously employed by the Chatham County Sheriff's Department and had received a Two Year Performance Evaluation by the Chatham County Sheriff's Department that was maintained in Bryan Smith's Human Resource File with Chatham County stating: "Your Two Year Evaluation is totally unacceptable. Your Supervisors, Lt. Powell, Sgt. Hood and Sgt. Kutchings,

agree that there has been an obvious decline in performance since your last evaluation". (Court of Appeals Record R3-36-Exhibit B, App. E) Notwithstanding his Evaluation, Bryan Smith was hired as an Advanced Patrol Officer with Chatham County Police Department.

Bryan Smith's subsequent actions with the Chatham County Police Department and actions permitted by its other Police Officers, leading up to the automobile collision with Urban M. Krippene, show that this Department had a policy of failing to take remedial steps to correct Constitutionally offensive acts by County Police employees, including Officer Smith, which would infer deliberate indifference and tacit authorization of the offensive acts by Chatham County and by Officer Smith. Smith's known and permitted habitual actions that include Constitutionally offensive acts, as set out in his Termination Letter (App. D), were:

June 29, 1991: Inability to follow instructions and complete report. July 2, 1991: Attempted rape by Smith. July 9, 1991: Failure to service police unit. July 22, 1991: Smith domestic dispute. July 23, 1991: No work performance improvement. August 10, 1991: **At fault motor vehicle collision resulting from Unsafe Driving Techniques.** August 23, 1991: Bad progress report. September 4, 1991: **Violation of automobile pursuit policy.** September 20, 1991: Harassing citizen on September 11 and 13, 1991, while driving police vehicle. October 24, 1991: Overall poor work performance.

October 24, 1991: Slow response to Calls. November 7, 1991: Nasty and prejudiced complaint. January 29, 1992: **Automobile accident.** February 27, 1992: Disregarding orders. April 20, 1992: **Automobile accident, driving 83 miles per hour.** May 12, 1992: **Speeding 30 mph over speed limit twice within 45 minutes.** May 22, 1992: **Recommendation of additional two weeks denial of take home privileges and if any more accidents Smith be terminated because of negative retention problem.** July 2, 1992: Poor work performance. September 27, 1992: Slow Call response. October 20, 1992: Rude and disrespectful. January, 1993: Damage to Unit. February 14, 1993: Making traffic stops in route to Call. February 15, 1993: Sick leave abuse. March 9, 1993: Late for work. May 30, 1993: Out of uniform, not responding to duty. August 6, 1993: Unfamiliar with divisions and streets. September 26, 1993: **Automobile accident.** January 8, 1994: **Automobile accident.** July 9, 1994: AWOL from Duty.

Krippene fatality

Petitioner contends, with regard to Police Officer Bryan Smith, that under the egregious circumstances presented in this Case, Bryan Smith's arbitrarily driving his Police vehicle in excess of 70 mph at the time of the Krippene collision amounted to an abuse of his Police authority in a manner that shocks the conscience, a propensity about which the Respondents had prior notice with deliberate indifference, rose to the level of a Constitutional deprivation of the rights of the late Urban M. Krippene.

Accident Reconstructionist Corporal Scott Simpkins found Smith at fault. (Court of Appeals Record R3-36-Exhibit H, pp.25, 57, App. F) Chief Ronald Lowe opined in deposition that, prior to the Krippene wreck, Bryan Smith's Personnel File showed an existence of a habitual pattern of reckless conduct involving Police vehicles that put citizens of Chatham County in danger. (Court of Appeals Record R3-36-Exhibit J, pp.95-104, App. G) Officer Harvey J. Lowery by deposition testified that in January 1993 he reported to Maj. William Freeman, the Patrol Commander, that Bryan Smith had a history of bad driving habits.

Chief Lowe admitted in deposition that the corrective action taken against Officer Smith by the Chatham County Policymakers did not seem to work; that different discipline should have been implemented; that Smith's deficiencies showed a pattern in his operation of Police vehicles; that Police Officers owed a duty to the general motoring public in the safe operation their Police vehicles; that he was surprised at the manner in which Officer Smith had been disciplined; that Major Freeman and prior Chief St. Lawrence, who were policy makers, were aware of the problems that Officer Smith was exhibiting in operating Police vehicles, according to the Personnel File, prior to the Krippene fatality; that Smith should have been trained more thoroughly or "gotten rid of"; and that other Police Officers on the Chatham County Police Force had demonstrated a pattern of reckless disregard of public safety on the highways and streets such as demonstrated

by Officer Bryan Smith. (Court of Appeals Record R3-36-Exhibit J, pp.36, 37, 39, 44, 45, 56, 79, 81, 115, App. H)

Preferential treatment of Police Officers

Corporal Peter L. Leopold testified in deposition that during the period Officer Smith was employed at the Chatham County Police Department there was not consistency in administering discipline to Officers in their operation of Chatham County vehicles. (Court of Appeals Record R3-36-Exhibit L, pp.12-15, App. I)

Corporal Neal Owens testified in deposition that a policy existed within the Chatham County Police Department not to issue Speeding Tickets to Police Officers while operating Police vehicles when not responding to a Call and that it was the Police Department's policy to allow Police Officers, when not responding to a Call, to exceed the speed limit in violation of State Law. (Court of Appeals Record R3-36-Exhibit G, pp.9-14, 21, 22, App. J)

Awareness of Policymakers

The depositions of Major William Freeman, former Chief Ronald Lowe, and former Chief Al St. Lawrence, show that each of these three Policymakers, prior to the Krippene fatality, were also made aware of Officer Smith's history of habitual reckless driving while operating Police vehicles that also involved prior speeding with a wreck. (Court of Appeals Record R3-36-Exhibit M, pp.50, 51, App. K and R3-36-Exhibit J, p.78, App. L, and R3-

36-Exhibit N, pp.30-31, App. M)

Major Freeman had notified Acting Chief Davin in a written Memo of May 12, 1992 produced during discovery that the County was dealing with a "negligent retention problem" with Bryan Smith due to his number of car wrecks. (Court of Appeals Record R3-36-Exhibit M, pp.46, 47, App. N)

This pattern not only caused property damage and personal injury prior to the Krippene fatality, but also showed a conscious disregard by the Policymakers of Chatham County of deliberately failing to take remedial steps to correct the Constitutional offensive acts by Chatham County Police Department which were foreseeable as a cause of injury to citizens of Chatham County.

The Expert Witness Report of Daniel S. Ray, an expert who has over 25 years experience in law enforcement and who had served as Senior Agent-In-Charge of Regional Aid for the Georgia Peace Officer's Standard and Training Counsel, a State Licensing Authority for the State of Georgia for all Peace Officers, including Chatham County Police Officers, established by discovery that Chatham County Police Department adopted, adhered to and ratified inappropriate actions by its Police Officers, and had created a policy of not properly training, re-training, disciplining and terminating Officer Bryan Smith and of having allowed Officer Smith to continue to inappropriately and unsafely operate Chatham County Police vehicles, which

created a danger to the motoring public prior to November 18, 1994. (Court of Appeals Record R3-36-Exhibit O, App. O)

Awareness of Police Officer

The history of the "reprehensible" conduct of Chatham County Police Officer Bryan Smith, as characterized by the District Judge in the April 16, 1997 Order, at p.3, as well as the fact that Smith must have known that he was placing citizens of Chatham County, who on November 18, 1994 unfortunately happened to be Urban M. Krippene, in great danger by his unnecessary operation of a Police vehicle at an extremely high speed. Any reasonable Police Officer charged with enforcing speed limits would have known of this danger. No reasonable Police Officer could have believed such conduct was completely immuned from liability. Any reasonable Officer in Smith's circumstances would have been aware that if his conduct was sufficiently egregious and would result in either injury or death to a citizen who had the misfortune of being on the same roadway with him, he would be held liable for such injury or death. *Cf. Lewis v. Sacramento County*, 98 F.3d 434, at 445 [15].

REASONS FOR GRANTING THE WRIT

THE PETITION SHOULD BE GRANTED BECAUSE THE DISTRICT COURT ORDER IS DISTINGUISHED FROM AND CONFLICTS WITH THIS COURT'S PRIOR RULINGS AND PRIOR RULINGS OF OTHER CIRCUITS ON A CONSTITUTIONAL DEPRIVATION AND RIGHT TO RELIEF UNDER 42 USC SECTION 1983 RESULTING FROM A CUSTOM

OR POLICY AND ARBITRARY AND DELIBERATE INDIFFERENCE REGARDING THE KNOWN INTENTIONAL AND ARBITRARY CONDUCT OF COUNTY POLICE OFFICERS AND FROM THE KNOWN INTENTIONAL AND ARBITRARY CONDUCT OF A COUNTY POLICE OFFICER WHO ABUSED HIS GOVERNMENTAL POWER IN A MANNER THAT SHOCKS THE CONSCIENCE.

This Argument on the Issues preliminarily addresses the merit of these Issues and why they are worthy of Certiorari consideration.

The Issues worthy of Certiorari consideration because the Court of Appeals Panel Decision, based on *Rooney v. Watson*, 101 F.3d 1378 (11th Cir. 1996), made without comment as to the specific applications of that Case to this Case, does not control the facts of the Case *sub judice* as applied to the relevant law, and since a proper application of the recent Decision of the Supreme Court of the United States in *Board of County Commissioners of Bryan County, Oklahoma v. Jill Brown*, 117 S.Ct. 1382, 137 L.Ed.2d 626, __U.S.__, decided April 28, 1997, and the proper interpretation of the precedent of the 11th Circuit in *Rooney, supra*, distinguished from this Case under consideration, would secure and maintain uniformity of Decisions in the Circuit Courts.

Further, the decisions of other Circuits, including the 3rd Circuit and the 4th Circuit, are split on the issue of liability under Section 1983 and the Fourteenth Amendment with respect to a Municipality failing to train and

supervise Police Officers' high speed use of their vehicles as applied to Federal rights. (District Court Order, p.4, FN 3, App. B)

The Respondents contended that the Petitioner could not establish a Constitutional deprivation supporting relief sought under Section 1983 and, even if so, Chatham County had no custom or policy of failing train, re-train and adequately discipline its Police officers. The Respondents, as does the District Court, and now the Circuit Court panel, rely on a version of the recent Decision of the 11th Circuit in *Rooney v. Watson, supra*.

The District Court in its Order granting Summary Judgment, in the view of this Petitioner, failed to give proper attention to the Policymakers of Chatham County Police Department continuing to allow misconduct on the part of its Police Officers that included Officer Smith.

It was not just Bryan Smith's negligent driving at the time of the collision with Mr. Krippene that took his life, but overall it was the established custom and policy of the Police Department with regard to the pattern of reckless disregard for the public safety on the highways of Chatham County by its Police Officers and Officer Smith that translated to this same pattern of reckless disregard for the public safety on the highways of Chatham County by the Chatham County Police Department, coupled with Bryan Smith's abuse of his governmental power in a manner that shocks the conscience at the

time of his collision with Mr. Krippene. Generally, the relevant law in this regard, properly applied, is clear, as stated in *Rooney v. Watson, supra, citing Cannon v. Taylor*, 782 F.2d 947 (11th Cir. 1986).

The conduct of both the Chatham County Police Department and its Police Officers, that included Police Officer Bryan Smith, however was more than just a failure to properly train Officer Smith as required under *Collins v. Harker Heights*, 503 U.S. 115, 122-123 (1992) involving a high-speed police pursuit, since the egregious conduct in this Case falls between the arbitrary employment of power as an instrument of oppression in an abusive manner that resulted from what would be considered deliberate indifference to the protection of the lives of persons using the highways and the arbitrary and deliberate indifference on the part of both the Police Department and Officer Smith that shocks the conscience, as extensively addressed in *Lewis, et al, etc. v. Sacramento, County, et al*, 98 F.3d 434, now being considered by this Supreme Court on Petition for a Writ of Certiorari.

The 11th Circuit Court in *Cannon, supra*, held in *Division* [3], at p.950, analyzing the decision by the Supreme Court of the United States in *Monell v. Department of Social Services of the City of New York*, 436 U.S. 658, 98 S.Ct. 2018, 56 L.Ed.2d 611 (1978), that a Municipality "would be liable for a policy that causes a citizen to be subjected to a deprivation of a constitutional right". *Citing*:

Grandstaff v. City of Borger, 767 F.2d 161, 169 (5th Cir. 1985). This decision then went on to state: "The policy may be a governmental 'custom' which has not received formal approval through the Official decision-making channel. A custom is a practice so settled and permanent that it takes on the force of law. *Monell*, 436 U.S. at 690-91, 98 S.Ct. at 2035-36".

The 11th Circuit, in reviewing *Rooney*, then addressed the reasoning made by that Circuit in their *Cannon v. Taylor* decision. A distinction was made in the *Cannon* decision between negligent or even grossly negligent operation of a vehicle by a policeman acting in the line of duty, that does not give rise to a cause of action for violation of a Federal Right under Section 1983, and the *Standard* for when Federal Courts may impose Section 1983 Municipal liability for a "policy" of failure to take steps to correct Constitutionally offensive acts by Municipal employees. *Cannon* at p.951.

The focus of the Petitioner's claim against Chatham County is for their improper inaction after notice of misconduct by its Police Officers and their deliberate toleration of this misconduct by its Police Officers and of Officer Smith's abusive conduct by his intentional misuse of his vehicle, as held in *Chicki v. Webb*, 785 F.2d 534, at 538 (5th Cir. 1986) *cited* in *Lewis v. Sacramento County, supra*, about which Chatham County also had prior notice of the possibility of harm that could be caused by his conduct, as being the party

responsible who may be sued directly for Official capacity actions of its employees, under *Monell, supra*, 436 U.S. at 690 n.55, 98 S.Ct. at 2035 n.55, 56 L.Ed.2d 61, for such misconduct by its Police Officers while indisputably acting under the color of State law. Chatham County and Officer Smith not only abused their power as an instrument of oppression in a manner that constituted arbitrary and deliberate indifference to placing the lives of citizens in jeopardy, but both were arbitrarily and deliberately indifferent to and callously disregarded the rights of citizens to be secure in and not deprived of their life, which shocks the conscience. As stated, Smith had to have reasonably known of this danger. *Cf. Lewis, supra*, 98 F.3d, at p.445.

In *Cannon*, the 11th Circuit did affirm the District Court's granting of Summary Judgment to the City of Columbus and their Officer. However, the analysis regarding the claim against individual Police Officers in *Cannon* is not applicable to this Case. It is *Division* [3] of the *Cannon* decision that should be addressed in relation to the facts of the present Case.

The United States Supreme Court has just addressed, once again, the problem of what would constitute a Section 1983 Municipal Liability for improper actions of its Police Officers, in *Board of County Commissioners of Bryan County, Oklahoma v. Jill Brown, supra*.

The *Brown* opinion turned on the County not being liable for a Sheriff's

isolated decision to hire a Deputy without adequate screening, because it had not been demonstrated that the "hiring decision reflected a conscious disregard for the high risk" that the hired Deputy would use excessive force, in violation of a Federally protected right. *Id.* pp.4-6. The facts and the application of the controlling law in the *Brown* opinion are patently different from the facts and the application of the controlling law in the Case *sub judice*; but for the notable fact, as to Bryan Smith, that in the present Case the continuing decisions by Chatham County to keep Officer Smith did reflect a conscious and arbitrary disregard for the high risk (*i.e.* the acknowledged "negligent retention" problem) that Officer Smith would injure someone while he was improperly and arbitrarily using his Police vehicle. Again, Officer Smith, himself, had to have reasonably known of this danger. *Cf. Lewis, supra*, 98 F.3d, at p.445.

It is clear from the review of Officer Bryan Smith's Personnel File, that there was a practice that became a custom with regard to Officer Smith's discipline, as in the case of all other speeding Police Officers by the Chatham County Police Department. Officer Smith was simply allowed to continually operate his vehicle in an arbitrary manner that had no significant repercussions to him, regardless of his habitual reckless driving. Further, it was established by Corp. Leopold, that the policy regarding discipline for reckless driving of Police vehicles was inconsistent at the Chatham County Police Department.

Corp. Neal Owens further established that all Police Officers were allowed to speed while not responding to a Police Call, even though they are subject to the State Motor Vehicle Laws, without any written Speeding Tickets being issued. Corp. Owens testified he was instructed by his Supervisors not to issue Tickets to Police Officers. It should be remembered that at the time of Officer Smith's at-fault wreck of April 20, 1992, he was driving the Police vehicle at a speed of 83 mph and that he also did not receive a Citation for speeding at that time.

In *Rooney v. Watson, supra*, the Court did not inquire into Volusia County's policy and custom relating to patrol vehicle operation and training, since it determined that Deputy Watson's conduct did not cause the Rooney's to suffer a Constitutional deprivation. In the instant Case it also must be recalled that it was the arbitrary conduct of both the Chatham County Police Department and Officer Smith, as demonstrated by the policy and custom relating to the arbitrary operation of Police vehicles in violation of State Law and the arbitrary operation of a Police vehicle by Officer Smith, that caused Mr. Krippene to suffer a Constitutional deprivation. The *Rooney* decision did not address the liability of the County with regard to Constitutional deprivation.

In the Concurring Opinion in *Rooney*, Circuit Judge Anderson specifically pointed out that the plaintiffs' evidence there about speeding was "vague and unhelpful" and thus could not constitute

the basis of liability on the County's part for a Constitutional violation. There is no such vagueness in the Case *sub judice*. In view of the evidence proffered by the plaintiffs in the *Rooney* Summary Judgment Record, Judge Anderson readily concluded that the plaintiffs there had failed to show that Volusia County was deliberately indifferent in a manner that could have caused the accident. This, as stated, is an important point in relation to the Record in the present Case. Chatham County constantly and consistently failed to properly discipline Officer Smith in relation to his habitual driving pattern, especially in regard to his arbitrary speeding, and also allowed such arbitrary speeding by other Officers.

In addition, the Court in *Rooney, supra*, established in *Divisions* [3][4], at p.1381, the proposition that inquiry into a Governmental custom or policy is relevant when a Constitutional deprivation has been shown to have occurred as a result of that custom or policy that, in itself, amounted to a Constitutional deprivation (as shown in the Case *sub judice*). *Citing, Vineyard v. County of Murray, Georgia*, 990 F.2d 1207, 1211 (11th Cir.), *cert. denied*, 510 U.S. 1024, 114 S.Ct. 636, 126 L.Ed.2d 594 (1993) [FN3]. Therein lies the distinction. *Also See Nishiyama v. Dickson County, Tenn.*, 814 F.2d 277 (6th Cir. 1987) (*en banc*), where the County was held responsible for its Sheriff routinely letting an inmate, who had a history of pulling over motorists, drive a Patrol Car to run errands. Although the *Gross Negligence Standard* no longer applies in the 6th Circuit under

Foy v. City of Berea, 58 F.3d 227, 230 (6th Cir. 1995), the 6th Circuit adopted the *Deliberate Indifference Standard* to be applied to substantive Due Process violations alleged under Section 1983. *Id.* 232 [5], *citing DeShaney v. Winnebago County Department of Social Services*, 489 U.S. 189, at 198-199 n.5, 109 U.S. at 1005 n.5. Again, it should be noted that there is a broad spectrum ranging throughout the various Circuits regarding Official conduct that constitutes a Section 1983 Due Process violation. *See, e.g. Lewis v. Sacramento County*, 98 F.3d at 439 n.5.

The Petitioner, under the foregoing established facts, has demonstrated that a custom or policy and the deliberate indifference of Chatham County caused a deprivation of Mr. Krippene's Constitutional rights, as required under *Canton v. Harris*, 489 U.S. 378, 385 (1989) (cited in *Rooney, supra*, at p.1380).

The "link" required in *Hill v. DeKalb*, 40 F.3d 1176, 1195 (11th Cir. 1994), between the causative actions of the Chatham County Police Department and the consequential injury sustained and death of the late Urban Krippene, is unmistakably plain and conspicuous. The requisite causal connection was the custom of the Police Department that arbitrarily allowed its Police Officers to arbitrarily speed at will with this permissiveness and the deliberate indifference of the Chatham County Police Department being the "moving force" in the death of Mr. Krippene, as required in *Canton*, at 389, 109 S.Ct. at 1205, quoting *Monell* at 694, 98 S.Ct. at 2038, *cited* in *Lewis v. Sacramento County*,

at 646 [18,19] *Also See Generally*: District Court Order, pp.4, 5, App. B.

The Supreme Court in *Brown, supra*, at p.7, citing from *Canton, supra*, stated that "continued adherence to an approach that [a municipal decision-maker] know[s] or should [have] know[n] has failed to prevent tortious conduct by employees may establish the conscious disregard for the consequences of their action, the 'deliberate indifference' ... necessary to trigger municipal liability." *Id.* at p.390, n.10. The Supreme Court in *Brown, supra*, continued by also stating that the existence of a pattern of tortious conduct by inadequately trained employees may tend to show that the lack of proper training, rather than a *one-time* negligent administration of the program or factors particular to the Officer involved in a particular incident, is the "moving force" behind the injury sustained by Petitioner's decedent. *See also Canton*, at pp.390-391.

CONCLUSION

This Case presents a question of exceptional importance concerning whether a litigant is entitled to relief under Section 1983 when a Police Department by custom or usage arbitrarily and with deliberate indifference causes a citizen to be subjected to the deprivation of a right secured by the Constitution and Laws by one of its Police Officers knowingly placing citizens in great physical danger.

Should the Opinion below be allowed to stand, Nancy Kimball Krippene and the

Estate of her deceased husband Urban M. Krippene will have been denied Due Process and will forever suffer the consequences of a decision that incorrectly applies prior Rulings of this Court and of the Circuit Courts of Appeal.

By granting this Petition for Certiorari this Court can correct the 11th Circuit's *Per Curiam* Opinion which incorrectly applies not only its own prior Rulings but which is contrary to this Court's prior Holding that a litigant has a Due Process right to relief under Section 1983 when a State authority by custom or usage arbitrarily and with deliberate indifference causes a citizen to be subjected to the deprivation of a right secured by the 14th Amendment to the Constitution and Laws, and that Section 1983 can be used to effectuate this right.

The granting of this Petition will also establish uniformity among the Circuits now split on the Issue of Section 1983 liability for failure to train and supervise Police Officers with regard to the nation-wide, judicially known problem of unnecessary high-speed operations of Police vehicles that will deter such "unlawful actions by public officials and compensat[e] victims of such conduct." *Elder v. Holloway*, 510 U.S. 510, 511, 114 S.Ct. 1019, at 1020, 127 L.Ed.2d 344 (1994).

In so doing, this Court can also reaffirm the limitations imposed on a District Court Judge to issue Summary Judgments in Section 1983 cases under Federal Rules of Civil Procedure, Rule 56,

that would allow a litigant to have a jury determine in an action at Law whether there is liability to a party injured by reason of a violation of Section 1983.

ACCORDINGLY, this Petitioner respectfully requests that her Petition for a Writ of Certiorari be granted.

Respectfully submitted:

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